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8 Attorney for Defendant Josef F. Boehm

9 IN THE UNITED STATES DISTRICT COURT

10 DISTRICT OF ALASKA

11
12 Sally C. Purser,)
13 Plaintiff,) REPLY TO PLAINTIFF'S OPPOSITION
14 v.) TO MOTION FOR CONTINUANCE
15 Josef F. Boehm, Allen K.)
Bolling, and Bambi Tyree,)
16 Defendants.)
17 CASE NO.: A05-0085 (JKS)
18)
19)

20 I. INTRODUCTION

21 Purser fails to address any of the continuance factors in her
22 opposition. Purser argues that local counsel should represent the
23 defendants in South Dakota. That argument is irrelevant and should
24 not be considered. If Purser's argument is considered, it is
25 easily dismissed. Local counsels, in both Alaska and South Dakota,
26 are not in a position to take on the role of primary counsel in
27 either of these matters. Pam Sullivan's affidavit, local counsel
28

1 in Alaska, is attached as Exhibit One and Robert Van Norman's
2 affidavit, local counsel in South Dakota, is attached as Exhibit
3 Two.

4 **II. UNDER THE "FLYNT FACTORS" TEST FOR CONTINUANCES, BOEHM'S**
5 **MOTION FOR A CONTINUANCE SHOULD BE GRANTED.**

6 The appellate court will look at the following four factors,
7 known as the "Flynt factors", in deciding whether a denial of a
8 request for a continuance was an abuse of discretion: (1) the
9 **diligence** of the appellant to ready his defense prior to the date
10 set for hearing, (2) the **usefulness** of the continuance, (3) the
11 **inconvenience** caused to the court and the opposing party, including
12 its witnesses, and (4) the **prejudice** caused to the defendant
13 because of the denial. *U.S. v. Flynt*, 756 F.2d 1352, 1359 (9th Cir.
14 1985).

15 First, Boehm's counsel have shown great diligence in preparing
16 Boehm's defenses prior to the date set for hearing. The amount of
17 work and preparation has been recounted to this court many times
18 and is not in question.

19 Second, the usefulness of the continuance cannot be
20 overstated. The requested continuance will allow counsel to meet
21 both the schedule of this court and the court in South Dakota
22 allowing primary counsel to effectively represent both clients.

23 Third, the inconvenience to the opposing party should be
24 minimal. Purser does not state a single inconvenience in her
25 opposition. Instead, Purser argues that local counsel should
26 represent clients that have specifically requested that David
27
28

1 Kenner represent them. Therefore, this court should assume that
2 the inconvenience to Purser is minimal and not a factor.

3 Finally, a denial of the continuance will cause great
4 prejudice to Boehm. As stated in the attached affidavits, Boehm
5 cannot be represented by local counsel. Forcing him to do so will
6 cause great prejudice to him.

7 **III. CONCLUSION**

8 Boehm respectfully requests that this court grant Boehm's
9 motion for a continuance.

10 DATED this 6TH day of June, 2007 at Encino, California.

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14 KENNER LAW FIRM

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18 By: /s/ David E. Kenner

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